

1716441 (Migration) [2019] AATA 3283 (3 May 2019)

DECISION RECORD

DIVISION: Migration & Refugee Division

CASE NUMBER: 1716441

MEMBER: David Barker

DATE: 3 May 2019

PLACE OF DECISION: Sydney

DECISION: The Tribunal affirms the decision not to grant the applicant a Partner (Residence) (Class BS) visa.

Statement made on 03 May 2019 at 10:57am

CATCHWORDS

MIGRATION – Partner (Residence) (Class BS) visa – Subclass 801 (Partner) – genuine spousal relationship – allegation of contrived relationship – probative evidence to demonstrate substance to allegations – not shared regular day to day household expenses, pooled their finances or had any shared assets or debts – limited legal obligations to each other – limited credible evidence the parties have resided or established household together – lack of credible evidence of mutual emotional support – decision under review affirmed

LEGISLATION

Migration Act 1958 (Cth), ss 5F, 65, 359A, 376
Migration Regulations 1994 (Cth), r 1.15A; Schedule 2, cl 801.221

CASES

He v MIBP [2017] FCAFC 206

Any references appearing in square brackets indicate that information has been omitted from this decision pursuant to section 378 of the Migration Act 1958 and replaced with generic information.

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

1. This is an application for review of a decision made by a delegate of the Minister for Immigration on 18 July 2017 to refuse to grant the applicant a Partner (Residence) (Class BS) visa under s.65 of the *Migration Act 1958* (the Act).
2. The applicant applied for the visa on 7 July 2014 on the basis of her relationship with her sponsor. At that time, Class BS contained only one subclass: Subclass 801 (Partner). The criteria for the grant of this visa are set out in Part 801 of Schedule 2 to the Migration Regulations 1994 (the Regulations). The primary criteria must be satisfied by at least one applicant. Other members of the family unit, if any, who are applicants for the visa need satisfy only the secondary criteria.
3. The delegate refused to grant the visa on the basis that the applicant did not satisfy cl.801.221 because they were not satisfied that at the time of their decision the applicant and sponsor were living in a spousal relationship.
4. The applicant appeared before the Tribunal on 5 March 2019 to give evidence and present arguments. The Tribunal also received oral evidence from the sponsor. The Tribunal hearing was conducted with the assistance of an interpreter in the [Country 1] and English languages.
5. The applicant was represented in relation to the review by her registered migration agent.
6. For the following reasons, the Tribunal has concluded that the decision under review should be affirmed.

7. BACKGROUND

8. The applicant is a [Country 1] national and is [age] years old. The applicant first arrived in Australia in October 2007 on a Visitor (Subclass 676) visa and departed around four weeks later. She next came to Australia in May 2013 on a Student (Subclass 573) visa.
9. The sponsor was born in [Country 1] and is [age] years old. He came to Australia on a [specified] visa in March 2008 and was subsequently granted Australian citizenship in September 2014.
10. In the visa application and relationship statements provided with the visa application, the parties stated they met in [Country 1] in December 2012, commenced a relationship in September 2013 and the sponsor proposed to the applicant in March 2014. The parties were married in [Suburb 1], [State 1, Australia] in June 2014. The applicant was granted a Provisional Partner visa (Subclass 820) in July 2015.
11. The decision record, a copy of which was provided to the Tribunal with the review application, indicates the Department of Immigration received unfavourable information on 27 July 2015 and 17 June 2016 which claimed the applicant and sponsor had entered into a contrived relationship for the sole purpose of her gaining permanent residency in Australia. The unfavourable information included the allegation the sponsor was to be paid \$[amount] to remain married to the applicant until she obtained a permanent residency visa and that an initial payment of \$[amount] was made to the sponsor in July 2014. The informant further stated that the sponsor purchased a house in his sole name in 2014.

12. The delegate also noted that there were inconsistencies in responses provided by the applicant and sponsor, regarding the circumstances of the marriage proposal, during telephone interviews conducted with them both by Departmental officers in May 2016.
13. In summarising their reasons for determining the parties were not in a genuine relationship, the delegate stated:

There is very limited evidence before me to support that you and your sponsor have established your lives together as a spousal couple. Although there is evidence to suggest that you and your sponsor departed Australia for [Country 1] together, you arrived back on different dates and as per your own oral statement, your sponsor travelled further to [another country] with his relatives without you.

I acknowledge that there is evidence regarding your claimed joint address and finances, including superannuation and tax return. However, given the deficiencies in your knowledge and your sponsor's knowledge of your family life circumstances, I have formed the view that these arrangements were made solely for the benefit of visa application. The documents provided with your application can be easily obtained, even if the relationship is not genuine. The fact that you and your sponsor put your names on various documents does not mean that you genuinely share your financial resources and obligations. Nor does it mean that you have established a joint household and that you are in a spousal relationship.

I consider that the statements and documents you have provided have only been made to support your application, and are not true reflection of your relationship and I have great concern regarding the genuine nature of a number of the documents and the declarations provided by you. I therefore do not consider that you have a genuine commitment to your relationship with your sponsor, or that you are in a genuine and continuing relationship with him.

I am also not satisfied that you and your sponsor have a mutual commitment to emotionally support each other due to the lack of detailed information provided. I also find that there is limited evidence that you are residing together.

As a result of the two allegations received by the Department and contradictory statements provided by you and your sponsor during the telephone interviews, the Department sent you a letter dated 28 July 2016 inviting you to comment on the unfavourable information. You have not provided a plausible explanation regarding the fact that your husband purchased property in his name only and why you failed to provide the correct answers when you were asked about the year your sponsor purchased that house how you spent the last week end and the way your sponsor proposed to you. I believe that buying the first home and wedding proposal are significant milestones for any couple and one would expect that you would know how and when these events occurred.

I do not consider the information you have provided to reasonably explain the unfavourable information before the Department. I do not consider the information you have provided to be credible, reliable or support your claims that you are in a genuine relationship with your sponsor. I have given greater weight to the unfavourable information in material particular provided to the Department and the allegation indicating that your relationship with your sponsor is contrived.

While you and your sponsor claim to have lived together for two years, you have not provided any evidence regarding the progression of your relationship with your sponsor since the grant of your subclass 820 visa. You have also provided limited evidence regarding your living arrangements, and your day-to-day activities and financial arrangements as a couple.

The evidence before me does not support your claims that you and your sponsor pool your financial resources, socialise together and are publicly recognised as a couple, or that you share joint commitment to a shared life together.

Given the lack of supporting documentation and the fact that you and your sponsor provided completely contradictory statements during your telephone interviews, I am lead to conclude that the unfavourable information received by the Department is not simply malicious and spiteful, but is in fact corroborated by other information before me. I therefore give significant weight to the allegations.

14. Prior to and at the hearing the applicant's migration agent provided additional documents to the Tribunal including but not limited to the following:
- written submissions from the representative;
 - [Bank 1] account statements for a joint account (xx3637) covering periods December 2014 to May 2017;
 - [Bank 2] account statements for a joint account (xx3150) covering periods August 2017 to February 2019;
 - the parties' marriage certificate;
 - documents regarding the parties' identities;
 - evidence regarding the sponsor's purchase of a property in [Suburb 2], [State 1] (the [Suburb 2] property);
 - evidence in relation to the sponsor's financing of the [Suburb 2] property;
 - correspondence addressed to the applicant at the [Suburb 2] property;
 - correspondence addressed to the sponsor at the [Suburb 2] property;
 - correspondence addressed to both the applicant and sponsor at the [Suburb 2] property;
 - evidence regarding the sponsor's Australian Taxation Office (ATO) individual tax returns for the 2014, 2015 income years;
 - beneficiary information, dated 30 July 2015, regarding a [Bank 2] superannuation policy;
 - receipts;
 - utility bills;
 - evidence of the applicant's academic qualifications;
 - statutory declarations from the applicant and sponsor;
 - a statutory declaration from [the] sponsor's mother;
 - a statutory declaration from [Mrs A], the applicant's aunt;
 - travel records; and
 - photographs.
15. A statutory declaration from the applicant, dated 26 February 2019 contains information consistent with that provided in previous declarations from her and it declares:
- 1)
I was born on [date] in [Country 1].
 - 2)
I seek the Presiding Member of the Administrative Appeal Tribunal to reconsider my application for Permanent Residence (Partner) subclass 801 which was refused by the Department of Home Affairs on 18 July 2017. Following is the brief history of my relationship with my husband [Mr B]:

3) How I met my husband [Mr B]:
I met my husband [Mr B] in December 2012 in [Country 1]. At that time, [Mr B] with his parents and his sister visit their relatives in [Country 1]. Since [Mr B]'s parents and my father are friends. [Mr B] and his family came to visit my house in [address provided], [Country 1]. And then we went to dinner together. I sat next to [Mr B] and we chatted to each other. During our conversation, I felt that I really like him. He has a strong sense of humour. He treats everyone nicely and politely.

4) How our relationship developed:

After [Mr B] return to Australia. We kept in touch with each other via the phone call. We talked on phone once a week by pre-paid sim cards. On [date]/05/2013, I came to study in [City 1] at [University 1]. On that evening [Mr B] came to see me in myhomestay in [Suburb 3] at [street number provided] [name] Street, and we had a lot to catch up. [Mr B] and I continued seeing each other and going out very often for dinners,events and parties in the weekend. We have been spending a lot of quality time together. We both have a strong feeling toward each other.

4.1) When [Mr B] proposed to me:

On 15/03/2014, [Mr B] took me to a [Country 1] Restaurant in [Suburb 4]. He took a long pause and said to me words in effect "I love you very much, and I want you to be my wife." I was very excited and said "Yes, I do. I love you too and we will be together forever." The next day, we both told our parents and relatives that we both decided to make commitment with each other. They give us their blessing.

4.2) Our Wedding [date] June 2014:

Wedding ceremony

Date: [date] June 2014

Time: 12PM

Venue: [location], [Suburb 1] [State 1]

Guests: [number] people

Marriage Celebrant: [name deleted]

Witnesses: [name deleted] ([Mr B]'s best friend) and Mrs [A] (my aunt)]

4.3) Wedding Reception

Date:[date] August 2018

Venue: [name] Restaurant, [suburb] [State 1]

Guests: [number] people ([number] Tables)

Wedding expenses: Rings (\$[amount]), Costume hire (\$[amount]), Flower (Gift from our [friend]), restaurant (\$[amount]).

Total = \$[amount]

We are very grateful that our relatives and friends give us gift in cash in total of \$ [amount].

The balance of the wedding expenses, my husband and I paid for it.

We both started our cohabitation on the day of our wedding [date] June 2014. At that time, we were living with my husband's brother [on] [number provided] [name] Rd, [suburb] [State 1].

5) Financial Aspect:

At the time, my husband was working at [Company 1] until 2017. He was also working for [Company 2] in [another city] for nearly a year. Currently my husband is working full time with [Company 3] his average income is \$1500 per week. My husband is the main financial source for our family. Their household expenses: food: \$200 per week, petrol: \$100 per week, utility bills \$50 per week, mobile \$200 monthly. Private Health insurance with [a private health provider] \$150.50 monthly. Our personal expenses such as; clothing, haircut, make up shoes and entertainment \$600 monthly. Internet \$100/monthly. We both have two joint account with [Bank 1] and [Bank 2]. We are very grateful that [Mr B]'s parents provide to us some financial support \$500 per month. My husband uses [Bank 2] account for paying household expenses such as food, utilities, and personal expenses. I work [part time] 2-3 days per week. I receive an average income of \$300 per week. I deposit the income into joint account with [Bank 2]. The current balance of our joint account as at today is \$5,662.

6) Social Aspect:

My husband and I enjoy going out at the weekend together. Sometimes we did attend our friends' birthday party, go to dinner together with family. Because my parents live oversea, my husband and I travelled to see them, and sometimes they visit us in Australia.

7) Household Aspect:

My husband [Mr B] and I are living at [number provided] [Suburb 2] which we bought in 2015. My parents in law are living with us in this address. Usually my mother in law cooks for all of us. I help my mother in law to wash dishes and my husband took rubbish out. Most of the time my mother in law and I do the groceries shopping together, but sometimes my husband and I do the shopping together when he is free. I do the washing and my husband does the hanging and I do the folding. We both wash our car together usually on Sunday or whenever the sponsor is not working. We have been together and married for 4 years now, Our relationship is very strong from day to day. We support each other emotionally and financially. We both love each other very much, we would like to continue to live in Australia together and having children. So that we could continue to live with each other in Australia as a complete family.

I seek that the member of the Administrative Appeal Tribunal find that my husband and I meet the requirements and the criteria for legal relevant for a partner visa.

16. The statutory declaration from the sponsor, dated 26 February 2019 contains information consistent with that provided in the applicant's statutory declaration, which is also consistent with information in previous statutory declarations provided with the visa and review application.
17. The statutory declaration from [the sponsor's mother], dated 26 February 2019 declares that the sponsor announced his engagement to the applicant to her and her husband on 18 March 2014. [The sponsor's mother] further declares that she can confirm the sponsor did not receive any money for marrying the applicant and that the parties are in a genuine relationship with each other.
18. The statutory declaration from [Mrs A], dated 4 September 2018 declares the parties' relationship is genuine and continuing and that she has observed them together as a couple in a range of social settings.

19. **TRIBUNAL HEARING**

20. **The s.376 Certificate**

21. The Department's file contains a Certificate issued under s.376 of the Act which identifies documents in the file which are not to be released to the applicant unless the Tribunal considers this appropriate. This Certificate was brought to the attention of the applicant and her representative at the start of the hearing and submissions was sought from them in relation to the validity of the Certificate. The applicant indicated she wished to rely on her representative's submissions in relation to this issue and her representative made no specific submissions about the validity of the s.376 Certificate. She indicated that in relation to information that may be contained in documents referred to in the Certificate, the applicant wished to rely on the written submissions which have been provided with the review application.
22. I have considered this submission and the s.376 Certificate. I am satisfied the s.376 Certificate is valid, as the information in the documents specified were provided to the Department in confidence and I am satisfied that it is the public interest that the identity of the person who provided the information not be identified.
23. I told the application that I had decided not to exercise discretion to release the specified documents under the s.376 of the Act. I told the applicant that the information contained in the restricted documents pertain to the allegation that her relationship with the sponsor is contrived. I noted that this issue is discussed quite comprehensively in the delegate's decisions and in documents she had provided to the Tribunal. I informed the applicant that she would be provided with the opportunity to comment on, or respond to, particulars of this

information which are not discussed in documents she has provided with her review application, which may provide the reason, or part of the reason to affirm the decision to refuse the visa.

24. *Applicant's evidence*

25. In response to a question as to why the parties operate different joint bank accounts, the applicant told the Tribunal that when she came to Australia to study she opened a [Bank 1] account and at that time the sponsor was also operating a [Bank 1] account. She said that when he took out a home loan with [Bank 2], the sponsor started operating an individual account with that financial institution as well. She said they opened the joint account with [Bank 2] in August 2017.
26. The Tribunal invited the applicant to comment as to the weight that could be given to transactions in the [Bank 2] joint account, as this account was established after the delegate's decision. The Tribunal noted the delegate's discussion of the lack of apparent transactions involving regular household expenses or transactions involving the sponsor in the [Bank 1] joint account statements provided to the Department and invited the applicant to respond to the concern that the transactions in the [Bank 2] joint account may be tailored to respond to concerns raised by the delegate in their decision record. In response, the applicant said her husband was encouraged by the mortgage broker not to put her name on the home loan application for the [Suburb 2] property. She said that she trusts the sponsor completely. She said that he pays the home loan payments from his [Bank 2] account, but that when they read the delegate's decision record, they realised this was an issue they needed to fix up, so they opened a new joint account with [Bank 2].
27. In relation to transactions in the [Bank 2] joint account, which highlight the basis upon which the parties share regular household costs, or pool their finances towards meeting financial commitments, the applicant drew the Tribunal's attention to transactions where:
 - the sponsor's employment wages are deposited;
 - she has deposited cash into the account;
 - home loan payments;
 - her gym membership payments;
 - the sponsor's [mobile] phone plan payments;
 - her [other] mobile phone plan payments;
 - the parties' household internet account payments;
 - the parties' private health insurance fees;
 - funds withdrawn during the parties' trip to [Country 1] in October 2018.
28. The applicant said she and the sponsor shop in [grocery] stores that require cash payment and therefore there is no record of these day-to-day transactions in their bank account.
29. In relation to why her name is not on the title for the [Suburb 2] property purchased by the sponsor in September 2014, given they had at that stage been married for over three months, the applicant reiterated that this is because they took the advice of the person who assisted the sponsor to arrange finance for the property purchase. She said that this person said their prospects of securing a home loan would be diminished if her name was on the home loan and property title, due to her relatively low level of employment earnings. She reiterated that she trusts the sponsor and in any event, as the property was purchased after the wedding, it would be regarded as something they both owned.
30. As to where the funds to pay the deposit [for] the property purchase came from, the applicant said the sponsor paid \$[amount] from his personal savings, which he had accumulated from employment prior to their marriage and the remaining amount was gifted to them by their respective parents at the time of their marriage.

31. As to jointly owned assets, the applicant said she and the sponsor own furniture, whitegoods and electronic equipment, which they purchased for use in their home. She said that the sponsor paid for the car, which is registered in her name. She said the car cost \$[amount] and that there is no finance over it, as the sponsor paid for it in cash from his personal savings. She also said they both have wedding rings which are joint assets.
32. The Tribunal noted the delegate's finding that the sponsor's signature on the contract for the car purchase is quite different from his signature on the biodata page of his passport. The Tribunal further noted that documents provided with the visa application show the sponsor's signature on his passport biodata page is consistent with his signature on his driver's licence, and that neither of the signatures on these documents resembles the signature, which he allegedly placed on the car sales contract. In response, the applicant said she does not know why he signed the car contract document differently, but she contended he was present and did sign that document.
33. The applicant gave evidence that she and the sponsor have no joint liabilities. She said that she is still a full-time student and is reliant on the sponsor, as he is the main source of income in their household.
34. The Tribunal asked the applicant if she had any comments she wished to make in relation to the unfavourable information provided to the Department, which alleged that she and the sponsor entered into a contrived relationship for the sole purpose of assisting her to gain permanent residency in Australia. The applicant said she is not sure who provided the unfavourable information or why they would have done so. She then said she had, two or three years ago, received two emails that were random and threatening to do harm to her family. She said that she thinks it was her aunt's former husband who made these threats against her and her family and provided the Department with the false information. She said her aunt is now divorced from her former husband and at the time the unfavourable information was provided they were involved in a conflictual separation. She confirmed her aunt's name is [Mrs A].
35. The Tribunal asked the applicant if she wished to comment about the specific allegation that the contrived relationship was arranged by her relatives and that the arrangement was that the sponsor would be paid \$[amount], with the first payment of \$[amount] being paid to him in July 2014. The applicant said this is not true at all and that in July 2014 she and the sponsor were married. She said at that time she was [age] years old and he was [age] years old. She said that he already had full-time employment paying him \$[amount] a week. She said that they were both young and they loved each other and that is why they got married. She said it is that simple and nothing was related to money.
36. The Tribunal noted that the delegate, in their decision record, raised concern about inconsistencies provided by her and the sponsor with regard to when and where he asked her to marry him. The Tribunal put to the applicant that when interviewed by Departmental officers on 24 May 2016 she said that she did not remember how the sponsor proposed to her and that it was not very special. When further prompted by the Departmental officers, she added that the sponsor proposed to her somewhere outside and that maybe a few friends and relatives were present. Whereas, when interviewed by the Departmental officers on the same date, the sponsor said he proposed to the applicant in a [Country 1] restaurant and that only the two of them were present. The Tribunal noted that in a statutory declaration, the applicant signed on 29 June 2014, she declared the sponsor proposed to her on 18 March 2014 and that in a statutory declaration signed by the sponsor on the day same date, he declared he proposed to the applicant on 18 March 2014, in front of his parents and her aunt.

37. The Tribunal noted that since 2014 the applicant provided a further statutory declaration to the Department, dated 18 July 2016, where she declared the sponsor proposed to her in the presence of their parents and cousins at an address in [Suburb 3] [State 1]. In a statutory declaration, signed by the applicant on 5 September 2018, which has been provided to the Tribunal, she declares the sponsor proposed to her on 15 March 2014 at a [Country 1] restaurant in [Suburb 4] and that the following day they informed their parents and relatives, who gave their blessing for the marriage to proceed. In a further statutory declaration, signed by the applicant on 26 February 2019, she declares the sponsor proposed to her on 17 March 2014 at a [Country 1] restaurant in [Suburb 4].
38. The Tribunal put to the applicant that the inconsistencies in the evidence she has provided the Department and the Tribunal regarding the date and circumstances of the sponsor's proposal of marriage give rise to a concern as to the reliability of this evidence. In response, the applicant said that during the phone interviews conducted with her and the sponsor in May 2016 they were very nervous. She said the sponsor proposed to her on 17 March 2014 in a [Country 1] restaurant and that she said yes. The applicant said that the next day they decided to announce the marriage proposal to their families and did so to the sponsor's family in person and then called and informed her parents. She said they announced their intention to marry at [Suburb 3] and that she thinks the migration agent she was using at that time put the wrong date on the statutory declaration she signed in June 2014.
39. The Tribunal invited the applicant to comment on the concern she had adapted her claim about the circumstances of the sponsor's marriage proposal to respond to concerns raised by the delegate in their decision record, including the improbability of her parents witnessing the marriage proposal, as she had initially indicated it occurred on 18 March 2014 and her parents had in fact departed from Australia at 6:26 AM [in] March 2014. In response, the applicant reiterated that the sponsor proposed to her on 17 March 2014 and that they announced their intention to marry in front of his parents and her aunt and uncle on 18 March 2014.
40. As to the nature of their current household arrangements, the applicant confirms the parties have no joint responsibility for the care and support of children. In terms of where they are currently residing, she said they continue to live in the [Suburb 2] residence, along with the sponsor's parents and his younger sister. In relation to who has responsibility for housework, the applicant said her mother-in-law cooks for everybody, with some assistance from her. She said that she and her mother-in-law share the task of cleaning the house and that she washes clothes and that the sponsor helps her to hang out the washing. She said that they wash the car together if they are both free at the same time of a weekend.
41. In relation to the social aspects of the parties' relationship, the applicant said she and the sponsor have travelled offshore on four occasions since they were married. She said they travelled to [Country 1] twice in 2015, once in 2016 and then again in September 2018. She said they spent four days in [another country] together during the 2016 trip. The applicant said the photos provided with the review application and previously provided to the Department include numerous photographs taken during these overseas trips together. She said that they had contact with relatives in [Country 1] during these trips and that this is apparent in the photographs they have provided. In terms of social activities that the parties' plan and undertake together, she said at times friends visit the sponsor's family home and at times they go to friends' parties. In response to a question from the Tribunal as to who has provided witness support declarations attesting to the genuine nature of their relationship, the applicant said her aunt and mother-in-law have provided declarations. As to who apart from family would be aware the parties are married, the applicant said their friends know they're married and that the phone she uses is under the sponsor's name and that they have private medical insurance that covers both of them.

42. In relation to the commitment aspects of their relationship, the applicant said she met the sponsor in December 2012 in [Country 1]. She said the sponsor and her father are friends and that they met when the families spent time with each other during a trip made by the sponsor and his family to [Country 1]. She said that when they met they realised they liked each other a lot and so they kept in contact after the sponsor returned to Australia. She said that five months later she decided to study in Australia. She said that she completed [Course 1] and that she is now undertaking [Course 2] which she will complete this year. The applicant emphasised how the sponsor has stuck by her despite it now being four years since she was granted the Provisional Partner visa in 2015. She said that she and the sponsor emotionally support each other and that they do not want to live separately from each other. She said that they wish to start a family in a few years' time.

43. *Sponsor's evidence*

44. The sponsor gave evidence that he purchased the [Suburb 2] property at auction and that the \$[initial] payment to secure the property came from a combination of his own savings and from \$[amount] his sister gave him. When asked by the Tribunal whether the applicant was aware his sister contributed \$[amount], the sponsor initially said that he thought she did and then, when asked whether they had discussed this issue, the sponsor said the applicant did know about his sister's financial contribution. When asked in what bank account he would have accumulated the funds he used to pay the deposit for the [Suburb 2] property, the sponsor said he used his [Bank 2] account.

45. The Tribunal invited the sponsor to comment on the allegation he was paid \$[amount] in July 2014 for entering into a contrived relationship with the applicant. In response, the sponsor said that he was unaware of that allegation until questioned about it when the Departmental officers rang him. He said that when he found out about the allegation, he wondered who had provided that information to the Department. He said he talked to the applicant, who told him that it was probably her aunt's ex-husband, who was trying to cause trouble for the family.

46. As to the current state of their relationship, the sponsor said that he and the applicant live together every day and have done so since they were married. He said that they are in a continuing relationship and have no problems.

47. *Applicant comments regarding evidence provided by the sponsor*

48. With regard to the evidence provided by the sponsor during the hearing, the applicant said that she thinks the sponsor was confused when he said his sister contributed some funds towards the deposit he paid for the [Suburb 2] property. She then said he had not previously discussed any such arrangement with her.

49. *Submissions by the applicant's migration agent*

50. The representative submitted that the parties' relationship is genuine and that all aspects of the relationship criteria are satisfied. She said the parties are financially dependent on each other. She said they have made four trips to [Country 1] together and that their marriage is known to their family and friends. She said the parties reside together and share household chores and that they have plans for their future. She said the refusal of the Subclass 801 visa has placed strain upon the relationship, but notwithstanding this, the parties emotionally support each other. She said the parties were nervous when interviewed by the Department and that this accounts for the inconsistencies in their responses.

51. Particulars of information put to the review applicant pursuant to s.359A of the Act

52. Evidence provided at the hearing in relation to the parties' relationship contained some inconsistencies. There is also information in the Department's file which is potentially adverse to the applicant's claims. This information was put to the applicant after the hearing in accordance with s.359A of the Act.
53. The particulars of information put to the review applicant in the s.359A letter from the Tribunal, dated 12 March 2019, were as follows:

In the review applicant's response to unfavourable information provided to the Department in July 2015 and June 2016, which alleges her relationship with [Mr B], is contrived for the purposes of facilitating her pathway to achieving permanent residency in Australia, she has denied this allegation. The review applicant has also denied the associated allegation that the contrived marriage was organized with the assistance of her and [Mr B]'s relatives and that an initial payment of \$[amount], being half of the overall payment [Mr B] was expecting, was paid to [Mr B] in July 2014.

In submissions received by The Tribunal on 27 February 2019 the review applicant's representative submits the adverse information, which alleges her relationship with [Mr B] is contrived and that [Mr B] was paid money for sponsoring the applicant, are malicious, untrue and unfounded because they were made by the former husband of her aunt, who was at that time the allegations were made, in dispute with her aunt. Oral evidence provided by you and [Mr B] during the hearing on 5 March 2019 was consistent with this claim.

The Member has decided to put information to the review applicant, pursuant to s.359A of the Act. The particulars of this information are:

- You came to Australia in May 2013 on a Subclass 573 Student visa, which was valid until July 2015.
- You were granted the Student visa on the basis of undertaking study at the [University 1] in [City 1], [State 1].
- In a relationship statement you provided with your visa application you stated that your father and [Mr B]'s fathers are friends.
- Information received by the Department indicates your parents and your aunt, [Mrs A], looked for someone for you to marry when you were having study difficulties.
- The Provider Registration and International Student Management System (PRISMS) student record indicates your enrolment in [Course 3], which was to run from February 2014 to December 2017, was cancelled due to your non-commencement of studies.
- Your subsequent enrolments in [Course 4] were also cancelled, respectively in March 2014 and July 2014.
- Information received by the Department indicates your parents, [Mrs A] and other relatives met with [Mr B] and his parents to discuss arrangements for a contrived marriage between you and [Mr B].
- Information received by the Department indicates [Mr B] was offered \$[amount] to stay married with you until you receive a permanent resident visa, with an initial payment of \$[amount] being made in July 2014.

- You are reported to be known as [name] to your family and that you have previously called yourself [Alias 1] on [social media].
- Copies of [social media] records provided to the Department, amongst other communications raising the concern that the marriage was contrived for migration purposes, corroborate the suggestion that you and your aunt discussed the payment of \$[amount] to [Mr B] amongst discussion of requirements for the marriage to proceed.
- A copy of these [social media] records is provided to you with this letter for your comments or response.
- During the hearing on 5 March 2019 you said [Mr B] paid \$[amount] of the required \$ [deposit] for the property, he purchased in [Suburb 2], [State 1] in September 2014, from money he saved from his employment earnings which he had in his individual account at [Bank 2].

whereas

- [Mr B] gave oral evidence at the hearing on 5 March 2019 that the \$[amount] he initially paid, towards the \$[deposit] for the property he purchased in [Suburb 2], [State 1] in September 2014, came from \$[amount] of his own savings and \$[amount] he got from his sister. [Mr B] also gave oral evidence he had discussed this with you and that you were aware his sister had given him this money.

This information is relevant because it supports the suggestion you, [Mr B] and members of both of your families did discuss a plan for you and [Mr B] to enter into a contrived relationship for the purpose of facilitating your achieving permanent residency in Australia at a time there was a significant degree of instability with regard to your study history and academic progress. The information also provides some corroboration to the allegation that [Mr B] required the payment of money to enter into the contrived relationship with you.

The inconsistency in the oral evidence provided by you and [Mr B] during the hearing about how he raised funds to pay for the deposit for the [Suburb 2] property raises concern as to the reliability of the evidence that has been provided by you both regarding this issue. If the Tribunal relies on some or all of this information it may find you, [Mr B] and members of your families who have provided statutory declarations and other evidence in support of the genuine nature of your relationship, which is not truthful and that this information is unreliable. This raises concern that evidence provided about the current circumstances of your relationship with [Mr B] cannot be relied on.

If the Tribunal finds that you and [Mr B] are not at the time of this decision, living together in a genuine relationship, it will affirm the decision under review.

Along with any response you provide to the Tribunal about the particulars of information put to you in this letter could you include a copy bank statements, covering the period 1 January 2014 to 31 December 2014, for the [Bank 2] account operated by [Mr B] during that period.

54. The Tribunal also provided the applicant with a copy of the [social media] records referred to in the s.359A letter. Which included the following messaging between [Alias 1], identified as the applicant and [Alias 2], identified as the applicant's aunt, [Mrs A].

[Alias 1]: - Is the application submitted just after we sign on the married certification or after party?

[Alias 2]: - On [date] June

[Alias 1]: - Coz I did talk to [name deleted] abt the \$

I said I might need it on 1st of June

[Alias 2]: - How much
U need to pay solicitor too

[Alias 1]: - Maybe [amount]

[Alias 2]: - [amount] something

[Alias 1]: - yes

[Alias 2]: - Y take [amount]k
Abt ur mum want to come

[Alias 1]: - \$[amount] solicitor
\$[amount] [name variation of Mr B]
\$[amount] school fee
.....

[Alias 2]: - U need to have 20 to 40 photos

[Alias 1]: - Ok

[Alias 2]: - If [second name variation of Mr B] have them we don need

[Alias 1]: - Nope! I meant for myself
1 for [date] June n another one for [date] July

[Alias 2]: - No only [date]
July is ok
[that date] is more important

[Alias 1]: - I see
So when we going to buy the rings?

[Alias 2]: - When [second name variation of Mr B] free
U know his full name
U there

[Alias 1]: - [Mr B]

[Alias 2]: - Ok

[Alias 1]: - He just called me at the moment

[Alias 2]: - Ok
I need to see him
once abt application
.....

[Alias 2]: - tell [second name variation of Mr B] wedding on [date] June

[Alias 1]: - I did

[Alias 2]: - Sunday at 3

[Alias 1]: - But I remind him again when we meet

[Alias 2]: - His parents n siblings have to be there

[Alias 1]: - But where?

[Alias 2]: - Park I will talk to him

.....

[Alias 1]: - Hopefully it's gonna be fine

[Alias 2]: - Hmm ok
U spend lot of money ok, u have to do the best

[Alias 1]: (thumbs up emoji) I'll try

[Alias 2]: - Responsibility is important
Schedule is part of that
Within 2 years is such a bit long to wait
U need to be careful

[Alias 1]: - I'll remember [name variation of Mr B] is my only one. Need to stick with him

55. The Tribunal consented to a request from the applicant for extra time to provide her response to the information put to her under s.359A of the Act and then, on 28 March 2019 received documents, which included statutory declarations, bank records and copies of two emails sent to the applicant.
56. The statutory declaration from the applicant declared in part:
1. I was born on [date] in [Country 1].
 2. I make this declaration to support my appeal matter at Administrative Appeal Tribunal.
 3. I respectfully seek that the Presiding Member of the Administrative Appeal Tribunal find that my relationship with my husband [Mr B] is genuine and continuing and satisfied the regulation class 801 to be granted Partner Permanent. Following are my response to the Department of Home Affairs pursuant to section 359A of the Act:
 4. I first arrived at [City 1] [in] May 2013, I enrolled with [University 1 in Course 5] from June 2013 to February 2014 for eight months, please kindly find enclosed my academic transcript and certificate. I confirm that I did not have any study difficulties as the academic record showed that my results were: High Distinction, Distinctions and Credit.
 5. Due to my previous overseas Migration Agent did not inform me regarding my enrolment and fee for my continuing course with [Course 3]. Because of the above mistake, I missed the next enrolment to the course, it led to my cancellation of enrolment in [Course 3] which was to run from February 2014 to December 2017.
 6. Alternatively, I had to enrol with [Course 4] for one semester because I could not have a gap in between. After did one semester of [Course 4], I realised that I still wanted to pursuit my career as [occupation], which it was my dream since I was young.
 7. In 2017 I finished [Course 1] and in May 2018 I received the Certificate of [Course 1].
 8. Currently I am continuing [Course 2] with [another] University and I expect to graduate at the end of this year 2019.
 9. Regarding [social media] Chatting Messages, my aunt [Mrs A] and I, we were discussing about preparation and organising my wedding with [Mr B] in [City 1]. As my parents live oversea ([Country 1]), my aunt played a role as my senior family member to advise and assist us in this matter.
 10. My aunty [Mrs A] and I are very close. We lived together before she moved to Australia. When I moved to [City 1] I lived with her in [Suburb 5].
 11. Aunty [knew] about my relationship with [Mr B], therefore, she understands about our circumstances and took care of us.
 12. In the chat, \$[amount] was mentioned, it was the amount of money that my parents gave to both of us as a wedding gift since we were planning to get married. Moreover,

my parents gave this money in case we would need it for the wedding expenses such as wedding dress, party and so on, and which also a gift for us to use after our marriage.

57. The statutory declaration from the sponsor declared in part:

- 1) I am making this statement in support of my wife [applicant name]'s appeal at the Administrative Appeals Tribunal.
- 2) The Tribunal has requested copies of my [Bank 2] account that I used to pay for the deposit on the home I purchased in [Suburb 2] in September 2014. I opened this account on 6th June 2014 as the loan for the home I purchased was going to be with [Bank 2] so the broker told me to setup an account with [Bank 2] to allow for the money I needed for settlement to be debited from this account. I have attached the relevant bank statements with our submission.
- 3) On the bank statement provided, I deposited an amount of \$[amount] on 6 June 2014 which Was the \$[amount] of my own money that I had saved for a house and \$ [amount] was a gift from my parents. On the 13 June 2014 there was a deposit for \$ [amount] and on the 17 June 2015 there was a deposit for \$[amount] these amounts were a gift from my sister. I am very grateful to my parents and my sister for their assistance in helping me and [my wife] purchase a home for us to live together in, as homes are very expensive without the assistance from my family and [my wife]'s family it would have been very difficult to buy a house to live in.
- 4) After the above deposits there were other deposits of cash which were from my job and [my wife]'s work and also further money that was gifted to us from my parents and relatives. Some of the money was from gifts from our relatives in support of our plans for our marriage as everyone knew that [my wife] and I needed to buy a house for us to live in. One of the reasons for this was the house we were living in at the time was very crowded. We were able to borrow 85% of the value of the home we purchased and the rest of the money we needed was made up of our own income and gifts from our family and relatives. We realise that we are very lucky that our family and relatives were able to assist us to purchase our first home and we are very grateful for this help.
- 5) I submit to the member of the Administrative Appeals Tribunal that my wife and I are in a genuine and continuing relationship. We love one another and wish to be able to spend the rest of our lives together. We have been through a lot as a couple and understand that there has been some speculation as to some allegations that have been made against us by people with ulterior motives. We respectfully submit that the member takes our submissions into consideration and allow us to remain together as a complete family in Australia.

58. The statutory declaration from the applicant's aunt, [Mrs A], declared in part:

- 1) I am making this declaration in response to the adverse information which the department received from my ex-husband about my conversation with the applicant who is also my niece [named] on [social media] in 2014 during the preparation for her wedding.
- 2) I am related to [the applicant]'s mother [as] her youngest sister. Since [the applicant] arrived in [City 1] for her studies, we have been very close, and I have looked after like she was my own daughter. My sister asked that I take care of her as she lives overseas in [Country 1].
- 3) [The applicant] lived with me when I lived in [Suburb 5]. At this time I was still married to my ex-husband [who] is who we believe was the person who provided the alleged adverse information to the Department of Home Affairs.
- 4) My relationship with my former husband broke down irretrievably since 2013 and as a result of this between my ex-husband and me, he was very angry with me and the situation, and he told me that he wanted to ruin my life and also my families lives. My ex-husband directly threatened me and [the applicant] saying that he would.
- 5) I believe that is what motivated him to target [the applicant] and [Mr B]'s relationship as he knew that I was very close to my sister and also [the applicant]. I believe that he wanted to hurt my family and me and I feel really sad that my relationship has

effected [the applicant] and [Mr B]'s relationship. I feel sorry for them and wish that my ex-husband did not do this to them because of what happened between him and me.

- 6) The messages that he sent to the department between [the applicant] and I were related to [the applicant] and [Mr B]'s plans to get married. As [the applicant] and [Mr B] are young and had not established themselves fully my sister had spoken to me and told me to help her by helping [the applicant] to organise her wedding and other financial matters. We knew that there were costs related to the wedding that they would need and as [the applicant] was a student her parents wanted to help her and [Mr B] out financially and contribute to the wedding, her studies, the legal fees for her visa and also to assist the couple with some money to go towards furnishing their new home and their future together. This was a gift and gesture from my sister and her husband to their daughter [the applicant] and her husband [Mr B] which is very common in our culture.
- 7) I can confirm that [Mr B] and [the applicant]'s relationship is strong and genuine, and I have seen it grow and develop as time has gone on. I have seen that the challenges that they have faced with [the applicant]'s visa application which has definitely put a strain on their relationship, but they continue to love and support each other through this, and I believe that their relationship continues to grow and is even stronger now because of this.
- 8) I would like to express my remorse and apologise to [the applicant] and [Mr B] and the Department of Home Affairs for the actions of my ex-husband and how this has negatively effected everyone involved. I respectfully seek that the Department of Home Affairs and Administrative Appeals Tribunal allow my niece [the applicant] and her husband [Mr B] to stay together and live in Australia forever.

59. The statutory declaration from the applicant's mother[declared] in part:

- 1) I am making this declaration in support of my daughter [applicant name]'s Review of Partner (Residence) (Class BS) visa at the Administrative Appeal Tribunal.
- 2) I am aware of the evidence provided to the Department of Home Affairs in relation to the alleged contrived marriage between my daughter [and] my son in law [Mr B].
- 3) As I live in [Country 1], whilst my daughter has been residing in Australia, I had asked my sister [Mrs A] to look after her. When my daughter met her husband [Mr B], my husband [and] I were very happy for them and we wanted to support them in every way possible. When we found out that they were getting married, we wanted to support the young couple as much as we could financially.
- 4) We knew that there would be costs associated with the wedding and for both of them settling in together as husband and wife and we wanted to contribute to these costs to alleviate some of the pressure from them. This is when I then asked my sister to help organise for some money to be given to [my daughter] and [Mr B] and to find out how much money they may need.
- 5) My daughter told me that they needed money for the wedding and that they were planning on buying a house and they needed furniture and other household goods when they moved in. She said that she needed around \$[amount] to cover these costs. My husband and I were more than happy to help them with these costs and also money to pay towards her studies and the legal costs related to their visa application.
- 6) In our culture it is common for the parents of the bride and groom to contribute to their children's futures financially, even after their marriage because we want to help the young couple.
- 7) I am also aware that my sister's ex-husband had the intention of negatively impacting our family's happiness and wish the breakdown of my daughter [and] [Mr B]'s marriage as well. I believe that this has been the motivation for him to try and destroy [my daughter] and [Mr B]'s chance at sharing their lives happily together.
- 8) My husband and I are all so happy that my daughter is married to [Mr B] and that they are able to live their lives together in Australia and care for one another. I can confirm that their relationship is a loving, caring and genuine one that both sides of the family support and wish to see them continue happy and together forever.

60. The statutory declaration from the sponsor's sister[declared] in part:

- 1) I was born on [date] in [Country 1].
- 2) I make this declaration to support my younger brother, [Mr B] appeal matter at Administrative Appeal Tribunal.
- 3) My parents had [a number of children]. I am the oldest one in the family. [Mr B] is the youngest son in the family.
- 4) [Mr B] and I have always been very close, [Mr B] often seeks advice and support from me.
- 5) When I found out that my younger brother [Mr B] was getting married with [the applicant] I was very glad for them both and that [Mr B] wanted to settle down.
- 6) [Mr B] told me that he would need some money for the deposit for the purchase of his home at [street number provided] [name] Road, [Suburb 2].
- 7) I discussed this with my husband [and] we discussed helping [Mr B] with some money towards the deposit for his home and we both decided that we could help him [Mr B] with an amount in total of \$[amount].
- 8) In our culture it is considered a normal gesture for family members to help and support each other financially and emotionally. I was happy to help my younger brother who need to start his own family and have a place to live for him and his wife.
- 9) I sincerely believe that the relationship of [Mr B] and [the applicant] is genuine and continuing as through my interactions with them I can see that they love one another and care for each other greatly. They enjoy their lives together as husband and wife and support each other in every way.

CONSIDERATION OF CLAIMS AND EVIDENCE

61. The issue in the present case is whether, at the time of decision, the applicant continues to be the spouse or de facto partner of the sponsoring partner.

62. In making its findings, the Tribunal has considered the documents contained in the Department and Tribunal files as well as the oral evidence provided by the applicant and sponsor at the hearing.

63. Credibility concerns

64. The unfavourable information received by the Department is a significant issue for the Tribunal to consider in this matter, as it calls into question the reliability of evidence provided by the parties in support of their claims. The unfavourable information alleges the applicant, with the support of relatives, arranged a contrived relationship with the sponsor due to disruption in her academic studies potentially putting her immigration status in Australia in some peril. The Tribunal acknowledges that a person providing unfavourable information to the Department can have a range of motivations for doing so, including intent to cause difficulty and disharmony in the family of an ex-partner, as is alleged in the current matter. The Tribunal is of the view that any such motivation is a less significant consideration for the Tribunal than the issue of whether there is probative evidence to either support the substance of allegations contained in unfavourable information provided in confidence, or a credible explanation to explain factors raised in any such unfavourable information. Put simply, the Tribunal is of the view that unfavourable information should not be disregarded if there is probative evidence to demonstrate there is substance to allegations contained in the unfavourable information.

65. In her initial response to the unfavourable information, which is contained in her statutory declaration, dated 16 September 2016, the applicant describes the allegation the parties' relationship is contrived as fake and without any evidence. Given the nature of the information provided to the Department regarding the alleged contrived relationship, the Tribunal does not find this a convincing response. The information provided appears to come from a person with some familiarity with the applicant's circumstances and provides a reason

as to why there was a need to arrange a contrived relationship, information as to when a payment was made to the sponsor and other details in relation to how the contrived relationship was arranged. The information provided to the Department also includes contemporaneous records of the applicant's aunt's [social media] account from 2014 where arrangements regarding the forthcoming marriage and visa application are discussed, along with references to payment of \$[amount] to the sponsor.

66. When invited to comment on this issue during the hearing, the applicant's response focused on the purported identity of the person who provided the unfavourable information and the vexatious motives that person had for trying to harm her family. She said any information provided by that person to the Department was false, but she did not comment upon any specific aspects of the unfavourable information discussed in the delegate's decision record. When pressed as to whether she wished to comment on the allegation the sponsor had received \$[amount] in July 2014 as an initial payment for entering into the contrived relationship, the applicant said that this was not true and in support of this claim emphasised the sponsor's employment in a job earning him \$1,500 per week. She claimed the parties had no motive for marrying other than the love they felt for each other.
67. In the documents provided by the applicant in response to the particulars of information put to her under s.359A of the Act, which included copies of her aunt's [social media], the purported identity and vexatious motives held by the person they suggest provided the unfavourable information to the Department is again discussed at length.
68. The Tribunal notes that the available evidence supports the allegation that the applicant, who was at the time on a Student visa, experienced disruption to her academic study in Australia in 2014. She concedes this and claims that she failed to commence study in [Course 3] in January 2014 because of an error by a previous migration agent. There is no third party evidence to support this claim. The applicant concedes she did not maintain study in a subsequent [Course 4] course she had enrolled in. The Tribunal acknowledges the applicant has provided evidence of her successful completion of courses prior to 2014 and since that time. The Tribunal has however placed weight on the evidence indicating the applicant had a gap in her study history in early 2014 and considers this consistent with information contained in the unfavourable information provided to the Department which refers to concern regarding her ongoing eligibility for a Student visa as providing the motivation to seek an alternate pathway to remain a resident in Australia.
69. The unfavourable information states the applicant, some of her relatives, the sponsor and his parents met to discuss arrangements for the parties' marriage in response to her potential visa difficulties. The applicant concedes her father and the sponsor's parents are friends and that her maternal aunt assisted in arranging her and the sponsor's wedding. She contends this is not untoward and is a quite normal practise within [Country 1] culture. The Tribunal accepts this claim, but is however concerned about aspects of the [social media] communication between the applicant and her aunt, where it is apparent the parties have a rather peripheral role in organising the wedding set down for '[date] June' and in the view of the Tribunal, there is a distinct lack of their taking ownership over this important event.
70. The Tribunal notes that the applicant had difficulty providing specific information regarding the sponsor's marriage proposal when interviewed by Departmental officers in May 2016, describing the event as not very special. The parties then gave differing accounts as to where the proposal took place and whether they were alone or in company of relatives. The delegate pointed out that statutory declarations provided by the parties at a later time contained implausible claims about the marriage proposal, in that it was claimed the applicant's parents were present when the proposal took place, when the date identified was actually a date upon which her parents departed from Australia at 6.26 am. In further statutory declarations and in her oral evidence to the Tribunal the applicant and her relatives

have, in the view of the Tribunal, further sculptured the evidence in an endeavour to resolve the inconsistencies about this issue that were identified by the delegate.

71. In the Tribunal's view, the inconsistencies in the parties' evidence with respect to the circumstances of the sponsor's marriage proposal have not been adequately explained and they add to the concern that the parties' relationship is contrived and largely arranged by the parties' relatives, rather than the relationship genuinely developing in the manner claimed by the applicant and sponsor.
72. The unfavourable information states the sponsor is expecting to be paid \$[amount] to stay married to the applicant until she receives a permanent residence visa and that an initial payment of \$[amount] was made to him in July 2014. In her response to the s.359A letter, the applicant states the \$[amount] referred to in the 'chat' between her and her aunt was an amount gifted to her and the sponsor by her parents as a wedding present in case it was needed for wedding expenses. Her aunt and mother provide information in statutory declarations included with the s.359A response which is consistent with the applicant's claims with respect to this issue. The Tribunal is not persuaded by this claim and prefers the actual wording in the [social media] 'chat' between the applicant and her aunt where the applicant clearly specifies a payment of \$[amount] to [name variation of Mr B] is required. The Tribunal is satisfied that the [name variation of Mr B] referred to in this exchange is elsewhere referred to as [Mr B] or [second name variation of Mr B] and that this is the sponsor.
73. The sponsor's bank records show cash deposits were made into the sponsor's individual bank account, such as \$[amount] on 13 June 2014, five days after the parties were married, and that further cash deposits of \$[amount range] occurred respectively on 17 June 2014 and 20 June 2014. In the response to the s.359A letter, the sponsor declares the \$[amount] consisted of \$[amount] of his own savings and \$[amount] gifted to him by his parents and the other amounts deposited on 17 June 2014 and 20 June 2014 were gifted to him by his sister. This is consistent with declarations from his sister which are included with the s.359A response. All three deposits were made in cash. The Tribunal, whilst acknowledging that in some cultural traditions the cash economy plays an important role, is concerned that there is a lack of corroborative evidence to support the claims with respect to where these funds came from. The Tribunal is further concerned that the overall amount of the cash deposits made into the sponsor's individual bank account, shortly after the parties' wedding and approximately three months prior to the purchase of a house in his sole name in which he resides with his parents, amount to \$[amount], which encompasses the amount referred to in the unfavourable information. In the view of this Tribunal, these cash deposits give rise to the concern that they include amounts paid to the sponsor to enter into the contrived relationship and contribute to the overall weight given to the unfavourable information alleging that the parties' relationship is contrived for migration purposes.
74. The Tribunal considers other aspects of the [social media] 'chat' between the applicant and her aunt contribute weight to the allegation the parties' relationship is contrived. This includes the discussion of how many photographs are needed, the need to be careful for a two year period, the applicant's acknowledgment of the need to remain in an exclusive relationship with the sponsor and the reference to an application, which the Tribunal has taken to be the Partner visa application lodged on 7 July 2014. The Tribunal notes two years is the period after an applicant is granted a provisional Partner visa that needs to pass before a permanent residential Partner visa can be granted.
75. Whilst acknowledging a person can have a range of motivations for entering into a marriage and a wish to achieve a particular migration outcome is not in and of itself an inappropriate motivation, there is a requirement in the Act that the relationship be genuine. The Tribunal is satisfied that the available evidence raises significant concerns as to whether this is the case

in the current matter and when the evidence is considered in its totality the Tribunal considers significant weight should be accorded to the unfavourable information provided to the Department.

76. Accordingly, the Tribunal is not satisfied the evidence provided by the applicant in support of her claims can be regarded as reliable. The Tribunal considers evidence provided by the sponsor and the parties' relatives needs to be viewed in a similar manner, given the allegation they actively collaborated in arrangements for the contrived relationship. The Tribunal has therefore considered the evidence regarding different aspects of the parties' relationship in light of these credibility concerns.

Whether the parties are in a spouse or de facto relationship

77. Relevantly to this matter, cl.801.221(2)(c) requires that at the time of this decision, the applicant is the spouse of the 'sponsoring partner', who must be an Australian citizen or Australian permanent resident or an eligible New Zealand citizen who was specified in the related Subclass 820 visa application as the spouse or de facto partner of the applicant. In the present case the applicant claims to be the spouse of the sponsor who is an Australian citizen and was identified in the Subclass 820 visa application. On the evidence before it, the Tribunal is satisfied that the sponsor is the 'sponsoring partner' of the applicant.
78. 'Spouse' is defined in s.5F of the Act and provides that a person is the spouse of another where the two persons are in a married relationship. Persons in a married relationship must be married to each other under a marriage that is valid for the purposes of the Act, there must be a mutual commitment to a shared life as a married couple to the exclusion of all others, the relationship must be genuine and continuing, and the couple must live together, or not live separately and apart on a permanent basis: s.5F(2)(a)–(d). In forming an opinion about these matters, regard must be had to all of the circumstances of the relationship. This includes evidence of the financial and social aspects and the nature of the visa applicant's and sponsor's household and their commitment to each other as set out in r.1.15A(3), which is extracted in the attachment to this decision. Each of the specific matters contained in r.1.15A(3) are effectively questions which must be answered: *He v MIBP* [2017] FCAFC 206.

Are the parties validly married?

79. If the parties are validly married, they may meet the requirements of a spousal relationship, but not a de facto relationship. The Department's file contains a copy of a –[Marriage] Certificate which confirms the applicant and sponsor married in [Suburb 1], [State 1] in June 2014.
80. On the evidence, the parties were married to each other under a marriage that is valid for the purposes of the Act as required by s.5F(2)(a).

Are the other requirements for a spouse relationship met?

81. Financial aspects of the relationship

82. The delegate found the bank records provided up until the time of their decision in July 2017 reflected the sponsor keeping his finances separate to those of the applicant and that transactions in a joint [Bank 1] account held by the parties only reflected the applicant's individual living expenses. When invited to comment on this aspect of the delegate's findings, the applicant essentially conceded the point, informing the Tribunal that the parties' opened a joint account with [Bank 2] in an endeavour to fix up the concern raised in the delegate's decision record.

83. The Tribunal has reviewed the financial records provided with the visa application and is concerned they do not display any significant degree of pooling of funds towards financial commitments, sharing of household expenses between the parties. However, given the importance of focusing on the circumstance that exist at the time of this decision, the Tribunal proceeded to review the current financial aspects of the parties' relationship.
84. *Any joint ownership of real estate or other major assets*
85. The applicant's representative submits the parties have purchased a home together, worth \$ [amount] and a [motor] vehicle together, worth \$[amount]. The Tribunal does not accept this claim, as it is not supported by the available evidence.
86. The title for the [Suburb 2] property and the home loan taken in relation to this property are in the sponsor's sole name. The home loan payments, whilst being paid from a joint account the parties' opened with [Bank 2] in or around August 2017, are paid from the sponsor's income. Prior to this the sponsor made the home loan repayments from his individual account with [Bank 2].
87. The applicant claims the title and home loan for the property were not placed in both of their names due to advice received by the parties that their chance of securing finance for the property purchase would be diminished if the loan application was in both of their names, due to the applicant having a lower employment income than the sponsor. The Tribunal is not persuaded by this claim and notes that it is not supported by any reliable third-party evidence. The Tribunal accepts the sponsor has a higher employment income than the applicant but is not convinced as to why their combined employment income would have adversely impacted any loan application.
88. The applicant contends that she trusts the sponsor completely and that as they are married and the [Suburb 2] property was purchased after they were married it would be regarded as a shared asset. The Tribunal acknowledges that there would potentially, in certain circumstances, be some merit to this claim. However, given the applicant did not indicate the parties were likely to separate and thereby necessitate a property settlement, or that the sponsor lacks good health and therefore she may in the foreseeable future inherit the property, the Tribunal is not persuaded that as things stand at the time of this decision, the [Suburb 2] property should be regarded as a shared asset, rather than an asset held by the sponsor.
89. As to the [motor] vehicle, the vehicle is registered and insured in the applicant's name. The applicant claims the vehicle was purchased for her by the sponsor, who paid for it in cash from his personal savings. The Tribunal considers any claimed cash transaction is difficult to corroborate where there is no documentary evidence supporting the claim. The delegate noted the sponsor's signature on a contract for the purchase of this vehicle does not match the signature on the biodata page of his passport. The Tribunal shares this concern and invited the applicant to comment on this issue and in doing so noted the signature on the sponsor's driver's licence is consistent with that on his passport biodata page. The applicant said she does not know why the sponsor signed this contract differently to his usual signature. Given the concerns held about the reliability of evidence provided by the applicant in support of her claims, the Tribunal is not satisfied by her explanation for the inconsistency in the sponsor's signatures on these documents and is concerned the signature on the vehicle purchase contract is not genuine. For these reasons, the Tribunal finds the [motor] vehicle purchased in 2016 is not a shared asset.
90. For these cumulative reasons, the Tribunal finds the parties have no property or other significant assets which they jointly own.

91. The representative further submits the parties jointly purchased wedding rings worth \$ [amount], furniture and electrical goods worth \$[amount] and a computer and iPad, worth \$ [amount]. The Tribunal has placed some weight upon these claims, but notes the amounts involved do not amount to a significant amount of money and the electronic goods, such as a television, computer and iPad in particular are goods that are quite portable in nature and could as easily be used for individual rather than shared use.

92. *Any joint liabilities*

93. The parties have no shared liabilities. The home loan for the [Suburb 2] property is in the sponsor's name and whilst repayments on this loan, since August 2017, are being made from a joint account opened by the parties following the Department's refusal of the applicant's Subclass 801 visa, the Tribunal is not persuaded this establishes the loan is a shared liability.

94. *The extent of any pooling of financial resources, especially in relation to major financial commitments*

95. The available evidence does not demonstrate that the parties pool their finances towards any major financial commitments, such as repayments of the loan taken out to pay for the [Suburb 2] property. There is no claim that the home loan is paid by anything other than the sponsor's employment earnings.

96. The applicant claims she deposits her \$300 per week casual employment earnings into the parties' joint account with [Bank 2]. A review of the statements from this account which have been provided with the review application do not support this claim. The claim that the sponsor's parents provide \$500 per month financial support is also not clearly supported by the joint account statements. There are periodic cash deposits into the account, but it is not apparent who has deposited these funds. In light of the sponsor's parents residing at the [Suburb 2] property, the Tribunal is not in any event persuaded any such contribution would have been for the purpose of assisting the parties pool their finances, rather than a general contribution towards expenses of the sponsor's family who reside together at the [Suburb 2] property.

97. *Whether one person in the relationship owes any legal obligation in respect of the other*

98. The documentary evidence includes correspondence regarding a superannuation policy held by the sponsor in July 2015, with [Bank 2], which identifies the applicant as a beneficiary of this policy. The Tribunal has placed some weight upon this evidence as an indicator of legal obligations which the parties have with respect to each other.

99. *The basis of any sharing of day-to-day household expenses*

100. The applicant drew the attention of payments made from the parties' joint [Bank 2] account and contended that these reflect the basis on which the parties share the cost of regular household expenses. The Tribunal accepts the sponsor's employment earnings are deposited into this account. The applicant claims she makes cash deposits into the account and whilst there are cash amounts deposited into the account, it is not possible to see who has made these deposits.

101. The Tribunal has placed only limited weight upon the applicant's claims with respect to the joint account with [Bank 2], as the account was only opened following the Department's refusal of the Subclass 801 visa and in response to concerns about the financial aspects of the parties' relationship which were detailed in the delegate's decision record. The Tribunal is

not persuaded the transactions evident in the account statements provided with the review application can be viewed outside of this context and with the concern that the account has been established only to support the visa application. The funds withdrawn from this account for a trip made by the parties to [Country 1] in October 2018 are also viewed in this light by the Tribunal, namely with the concern that this trip was made following the visa refusal in an attempt to respond to concerns raised by the delegate as to the non-genuine nature of the parties' relationship.

102. The Tribunal does however accept that the parties have private health insurance which covers both of them, fees for which are paid from the joint account. The internet connection for the [Suburb 2] property is held in both of the parties' names. However, given a number of the sponsor's relatives also reside at the [Suburb 2] property, who would access the internet at that location, the Tribunal is not convinced it is purely a regular household expense of the parties alone.
103. Other transactions in the joint account which were highlighted by the applicant as shared household expenses included mobile phone plans and a gym membership held by the parties separately. The Tribunal notes that it is not unusual that parties might have gym memberships and mobile phone accounts in their own names and these are not the sort of things that by necessity need to be held jointly. Accordingly the Tribunal has given some weight to this evidence.
104. The applicant gave evidence that the parties shop at [grocery] stores that require cash payment, resulting in a lack of documentation of such shared expenses. The Tribunal accepts that these sorts of transactions are not unusual in cultural communities within Australia where there continues to be a significant cash economy. However, as highlighted by the applicant, the consequence of this is a lack of documentary evidence to support any such claim and without such corroborative evidence the Tribunal places no weight upon this claim.
105. The Tribunal has been provided with numerous receipts from supermarkets and other retail outlets that do not indicate who purchased the items identified on the receipts. Receipts of a similar nature were provided to the Department. The Tribunal is concerned these receipts do not establish who purchased or used the items identified on the receipts. The Tribunal notes that some receipts detail multiple purchases of items from chemists, such as 11 purchases of pain relief medication from a Chemist Warehouse on 16 November 2017. The Tribunal is not satisfied these would have been purely for the use of the applicant or sponsor or that the receipts of this nature are an indicator of the basis upon which the parties share regular household expenses.

106. *Assessment of the financial aspects of the parties' relationship*

107. After reviewing the available evidence, the Tribunal finds that there is limited objective documentary evidence which indicates the financial aspects of the parties' relationship are at the time of this decision indicative of two people who have a mutual commitment to a shared life together. They have no shared assets, joint liabilities or significant financial obligations to each other. There is very limited documentary evidence to support the contention they pool their finances to any significant extent with respect to either major or minor financial commitments. The evidence as to the basis upon which they share day-to-day living expenses is not persuasive. The Tribunal finds the financial aspects of the parties' relationship, when considered in its totality, do not support the contention they are in a genuine and continuing relationship.

108. *The nature of the household*

109. *Any joint responsibility for the care and support of children*

110. The parties have no children.

111. *The living arrangements of the persons*

112. The applicant claims to reside with the sponsor, his parents and younger sister in the [Suburb 2] property. The Tribunal acknowledges documents which have been provided to the Department and Tribunal show that both the applicant and sponsor have had correspondence sent to them at the [Suburb 2] address and they have both provided this as their address to a range of government agencies and private businesses, including, but not limited to: the Australian Taxation Office, financial institutions, insurance providers, [and State 1 agencies]. The Tribunal has placed only limited weight on this evidence as while this evidence shows that the parties represent themselves to various agencies as living together, I am not satisfied there is sufficient probative, objective evidence to establish that this is the case.

113. Relatives of the parties, such as the applicant's mother and aunt, and the sponsor's mother and sister attest to the fact that the parties continue to reside together at the present time. The Tribunal has placed only limited weight on this evidence due to the concern these relatives have colluded with the parties in relation to facilitating the applicant's pathway to permanent residency in Australia through the contrived relationship.

114. Amongst the photographs provided with the visa and review application are photographs identified as taken at the [Suburb 2] property. The Tribunal has placed limited weight on this evidence, due to the concern the photographs may have been taken for the purpose of supporting the applicant's claims. The Tribunal has formed this view on the basis of concern as to the reliability of the parties' evidence regarding their relationship circumstances.

115. *Any sharing of the responsibility for housework*

116. The applicant gave evidence that she shares responsibility for most of the internal domestic tasks at the [Suburb 2] property with the sponsor's mother. The Tribunal has placed only limited weight on this evidence, due to the lack of objective corroborative evidence in support of this particular claim.

117. *Assessment of the nature of the parties' household arrangements*

118. For the reasons discussed elsewhere in this decision, the Tribunal has concern as to whether the parties and their relatives have given reliable evidence as to the nature of their relationship.

119. I am not satisfied the photographs supplied with the visa and review applications establish the parties share a household together at the present time. I have concern as to the evidence the parties have provided regarding this and other aspects of their relationship, such as the basis on which they share responsibility for housework. I have however given some weight to the evidence of the parties providing the [Suburb 2] residential address to a range of instrumentalities and businesses.

120. ***The social aspects of the relationship***

121. *Whether the persons represent themselves to other people as being in a spousal relationship with each other*

122. The photographs provided with the visa and review applications show the parties together and in the company of other people, both relatives and friends, in a range of social settings. The Tribunal has placed some weight on this evidence, albeit with the underlying concern that photographs can be arranged to support the visa application and do not provide a clear insight into how other people in the photographs view the connection between the applicant and sponsor.

123. The Tribunal accepts the sponsor has declared the applicant as his spouse to the Australian Taxation Office and has placed some weight on this and other instances where the parties have identified themselves as a couple, such as on their private health insurance policy.

124. *The opinion of the persons' friends and acquaintances about the nature of the relationship*

125. The Tribunal has placed no weight on the witness support statements from members of the parties' families due to the concern the statements are unreliable because they are not objective sources of information and out of the concern that they have been prepared to respond to concerns raised about the parties' relationship.

126. *The basis on which the persons plan and undertake joint social activities*

127. The evidence provided with the visa and review applications contains itemised photographs and travel records, which demonstrate the parties have spent time together and with relatives in a variety of places in Australia and also offshore. The Tribunal has placed some weight on this evidence, subject to limitations explained elsewhere in this decision relating to the concern that evidence has been created to support the visa application. The evidence supplied does detail the parties undertaking activities together over time, which would have required planning and preparation.

128. *Assessment of the social aspects of the parties' relationship*

129. I am satisfied the parties have travelled together and spent time with members of their respective families. I am not however persuaded that this has not been for the purpose of facilitating their claims as to the genuine nature of their relationship. I am satisfied that the parties represent themselves to some government agencies and businesses as a married couple I have placed some weight on the social aspects of the parties' relationship as an indicator that at the time of this decision they are in a genuine and continuing relationship.

130. ***The nature of the persons' commitment to each other***

131. The weight given to this aspect of the parties' relationship is influenced by the Tribunal's concern that the parties are in a contrived relationship and that the evidence provided in support of their claimed commitment to each other needs to be viewed in light of this concern.

132. *The duration of the relationship*

133. I accept the parties have been married since June 2014 and have placed some weight on this factor.

134. *The length of time during which the persons have lived together*

135. I acknowledge that the parties' claim to have lived together since their wedding in June 2014. I acknowledge the documentary evidence that has been presented with the visa and review applications, including financial records, correspondence addressed to the parties at the same address, multiple statements from relatives and other evidence. However, such evidence does not satisfy me that the relationship is a genuine one. Such evidence does not overcome my concerns noted elsewhere. I am of the view that if the relationship were not a genuine one, it would still be possible to prepare, or obtain, a substantial amount of evidence of the kind that has been presented with the visa and review applications, such as the correspondence, photographs and evidence of joint activities, overseas travel and statements from third parties. In my view, such evidence may be available whether or not the parties are in a genuine relationship and whether or not both have a commitment to such a relationship. In my view the fact that the parties have taken steps to obtain such evidence does not necessarily reflect on the nature of their relationship. It may equally reflect on their commitment to prepare evidence that the applicant perceives to be necessary to support her claims.

136. *The degree of companionship and emotional support that the persons draw from each other*

137. The parties declared their love for each other in a range of statutory declarations and in their oral evidence before the Tribunal. The applicant emphasised the manner in which the sponsor has stood by her and their wish to have children at some future point in time. The Tribunal has placed limited weight on this factor because of the concern it has for the reliability of the parties' evidence as to their commitment to their relationship.

138. *Whether the parties see the relationship as a long term one*

139. The Tribunal notes the parties gave consistent evidence during the hearing that they see their relationship as long term. However, I consider the parties' evidence with regard to this and related issues to be unreliable as the Tribunal is not satisfied the applicant and sponsor are in a genuine and continuing relationship.

140. *Overall assessment of the parties' relationship*

141. The Tribunal is not satisfied the evidence establishes the parties have at the time of this decision a mutual commitment to a shared life as husband and wife to the exclusion of all others, or that they are in a genuine and continuing relationship. This is because, when considering the different aspects of the parties' relationship at the time of this decision, the Tribunal is not satisfied the parties have, to any significant degree, shared regular day to day household expenses, pooled their finances or had any shared assets or debts. They have limited legal obligations to each other. There is limited credible evidence the parties have resided together, or that they have established a household together. They have no responsibility for the care and support of children and the evidence regarding any shared responsibility for housework is not persuasive. There is evidence members of the parties' families support the contention their relationship is genuine. There is evidence the parties plan and undertake some social activities together and in the company of family and friends. There is evidence of the parties presenting as spouses in relation to some government agencies and non-government organisations. The Tribunal has however unresolved concerns that evidence of the parties' undertaking joint activities together and representing themselves as spouses is for the purpose of supporting the visa application, rather than for other purposes. There is a lack of credible evidence that the parties' emotional support each other. Whilst the parties have been married since June 2014, the Tribunal has unresolved concerns the relationship is not genuine and as a result only limited weight has

been given to the duration of the relationship, the period in which they claim to have lived together and their claim that they view the relationship as long term.

142. The evidence supporting the contention the parties are in a genuine and continuing relationship is outweighed by the concern that the evidence provided by the parties and their relatives is not reliable and that there is evidence supporting the contention that the parties' relationship is a contrived relationship to facilitate the applicant gaining permanent residency in Australia.
143. Given these findings, the Tribunal is not satisfied that at the time the visa application was made, or at the time of this decision, the parties had a mutual commitment to a shared life to the exclusion of all others, or a genuine and continuing relationship, or that they live together or do not live separately and apart on a permanent basis.
144. The Tribunal is not satisfied that the requirements of s.5F(2) are met at the time of this decision. Therefore the applicant does not meet cl.801.221(2)(c).
145. Furthermore, the applicant has not claimed, and there is no evidence before the Tribunal, that the applicant meets the alternative criteria in cl.801.221(2A), (3), (4), (5) or (6).
146. For the reasons above, the applicant does not satisfy the criteria for the grant of the visa.

DECISION

147. The Tribunal affirms the decision not to grant the applicant a Partner (Residence) (Class BS) visa.

David Barker
Member

ATTACHMENT - Extract from Migration Regulations 1994

1.15A Spouse

- (1) For subsection 5F (3) of the Act, this regulation sets out arrangements for the purpose of determining whether 1 or more of the conditions in paragraphs 5F (2) (a), (b), (c) and (d) of the Act exist.
- (2) If the Minister is considering an application for:
 - (a) a Partner (Migrant) (Class BC) visa; or
 - (b) a Partner (Provisional) (Class UF) visa; or
 - (c) a Partner (Residence) (Class BS) visa; or
 - (d) a Partner (Temporary) (Class UK) visa;the Minister must consider all of the circumstances of the relationship, including the matters set out in subregulation (3).
- (3) The matters for subregulation (2) are:
 - (a) the financial aspects of the relationship, including:
 - (i) any joint ownership of real estate or other major assets; and
 - (ii) any joint liabilities; and
 - (iii) the extent of any pooling of financial resources, especially in relation to major financial commitments; and
 - (iv) whether one person in the relationship owes any legal obligation in respect of the other; and
 - (v) the basis of any sharing of day to day household expenses; and
 - (b) the nature of the household, including:
 - (i) any joint responsibility for the care and support of children; and
 - (ii) the living arrangements of the persons; and
 - (iii) any sharing of the responsibility for housework; and
 - (c) the social aspects of the relationship, including:
 - (i) whether the persons represent themselves to other people as being married to each other; and
 - (ii) the opinion of the persons' friends and acquaintances about the nature of the relationship; and
 - (iii) any basis on which the persons plan and undertake joint social activities; and
 - (d) the nature of the persons' commitment to each other, including:
 - (i) the duration of the relationship; and
 - (ii) the length of time during which the persons have lived together; and
 - (iii) the degree of companionship and emotional support that the persons draw from each other; and
 - (iv) whether the persons see the relationship as a long term one.
- (4) If the Minister is considering an application for a visa of a class other than a class mentioned in subregulation (2), the Minister may consider any of the circumstances mentioned in subregulation (3).